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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/560,012	04/27/2000	Timothy A. M. Chuter	ENDOV-51200	2752

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EXAMINER

SNOW, BRUCE EDWARD

ART UNIT PAPER NUMBER

3738

DATE MAILED: 05/05/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/560,012

Applicant(s)

CHUTER, TIMOTHY A. M.

Examiner

Bruce E Snow

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 March 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 26,27 and 30-38 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 26-27, 30-38 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____. 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

The following claims are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 26, what element is the “sealing stent”? Referring to figure 2, the only elements distal (inferior) the bifurcation junction is elements 48 and 50 which are the second and third support structures.

Claim 26, what are the “attaching devices”?

Claim 26, “fixating the second element superior to the renal arteries” is ambiguous in view of depending claim 34, “securing the second element inferior to the renal arteries” and figures 6 and 7.

Claim 34 directly conflicts independent claim 26 from which it depends.

Claim 38, “second element is delivered within the vasculature as an assembly” is ambiguous. What is “an assembly” and what elements does it include? Please direct to the specification for support and description.

Specification

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The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required:

Many of applicant's element names are not supported in the specification; the following are examples only. It is applicant's responsibility to assure all claim language is supported in the specification. Claim 26, "sealing stent" and "attaching device".

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in-

(1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effect under this subsection of a national application published under section 122(b) only if the international application designating the United States was published under Article 21(2)(a) of such treaty in the English language; or

(2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that a patent shall not be deemed filed in the United States for the purposes of this subsection based on the filing of an international application filed under the treaty defined in section 351(a).

Claims 26-27, 31-34, 37-38 are rejected under 35 U.S.C. 102(b) as being anticipated by Fogarty et al (5,769,882).

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Referring to all figures specifically figures 13-15, Fogarty et al teaches a method for repairing an aorta proximate the renal arteries using a graft assembly including first and second elements. The first element, shown in figure 13, having a sealing stent 122 disposed superior to a bifurcation junction and wherein the bifurcation junction of the first element is supported by the point of the aortic bifurcation. See figure 14. The method further including attaching a second element including element P and 150 subsequent to actuating elements 124, 126; and fixating the second element 150 superior to the renal arteries.

Regarding claim 31, figure 14 does not show the proportions of first element 120 as shown in figure 13. It is the Examiner's position that the element 120 would be "free floating".

Regarding claim 37, the second element of Fogarty et al is fully capable of buckling.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 30 is rejected under 35 U.S.C. 103(a) as being unpatentable over Fogarty et al (5,769,882) in view of Leonhardt et al (5,713,917).

Fogarty et al teaches the apparatus/method as described in the rejection above. However, Fogarty et al is silent regarding using a bracing wire. Leonhardt et al teaches a bifurcating stent-graft which uses bracing wires 70C, 72C, 68C which connects adjacent stents. It would have been obvious to one having ordinary skill in the art to have utilized the bracing wires of Leonhardt et al with the stent-graft of Fogarty et al to maintain desired spacing between stents.

Claims 35-36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fogarty et al (5,769,882) in view of Lazarus (5,104,399).

Fogarty et al teaches the apparatus/method as described in the rejection above. However, Fogarty et al is silent regarding using hooks. Referring to figure 2, Lazarus teaches hooks on a stent-graft. It would have been obvious to one having ordinary skill in the art to have utilized the hooks and/or attached stent of Lazarus with elements P and/or 140 of Fogarty to provide better anchoring of the graft or such that elements 140 could be eliminated.

Response to Arguments

Applicant's arguments filed 3/17/03 have been fully considered.

Regarding the rejection of claim 34 under 35 U.S.C. 112, second paragraph, applicant states that it does not conflict with claim 26 from which it depends. Figure 6

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shows the "second element" fixed superior the renal arteries and figure 7 shows the "second element" secured inferior the renal arteries. It is believed that additional description describing applicant's intention of the claim limitation would overcome the rejection.

Regarding the rejection in view of Fogarty et al, applicant argues "*that the Fogarty reference does not teach element P and item 150 as being "a second element"*". This is true; it is the Examiner that is calling element P and element 150 the "second element" or even "an assembly". Applicant's "second element" is a combination of many elements such as elements 58, 62, 70, 54. Applicant is surely not limiting the "second element" to a single element. Applicant's intended limitation is not commensurate with the scope of the claim.

Note that element 150 of Fogarty et al is an alternate to element 140; see applicant cited Cox et al (5,827,040), figure 8F, which is co-owned and incorporates Forgarty et al (5,769,882).

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the

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shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bruce E Snow whose telephone number is (703) 308-3255. The examiner can normally be reached on Mon-Thurs.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Corrine McDermott can be reached on (703)308-2111. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 305-3590 for regular communications and . for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0858.

bes
April 22, 2003



BRUCE SNOW
PRIMARY EXAMINER